IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

WP(C).No. 34569 of 2006(M)

PETITIONER:

M.V. RAGHAVAN,
VELATHU VEETTIL, BURNASSERY, KANNUR.

BY ADV. SRI.V.N.ACHUTHA KURUP (SR.)
SRI.B.S.SWATHY KUMAR
SRI.T.R.HARIKUMAR

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
CO-OPERATIVE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. G. SUDHAKARAN,
HON'BLE MINISTER FOR CO-OPERATION AND DEVASWOM,
KERALA STATE, THIRUVANANTHAPURAM.

3. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
KERALA, THIRUVANANTHAPURAM.

4. THE DEPUTY REGISTRAR (ADMINISTRATION),
OFFICE OF THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES (GENERAL),KANNUR,PART-TIME ADMINISTRATOR
OF KERALA STATE CO-OPERAIVE HOSPITAL COMPLEX &
CENTRE FOR ADVANCED MEDICAL SERVICES LTD.NO.4386,
KANNUR.

5. KERALA STATE CO-OPERATIVE HOSPITAL
COMPLEX & CENTRE FOR ADVANCED MEDICAL SERVICES LTD
NO.4386, KANNUR REPRESENTED BY ITS
MANAGING DIRECTOR.

BY ADV. SRI.V.G.ARUN (R5)
BY ADVOCATE GENERAL SRI.C.P.SUDHALARA PRASAD (R1 TO R4)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/01/2007, ALONG WITH WPC NO.923/2007 & WPC NO. 1218/ 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1	TRUE COPY OF THE ORDER NO.MT(1)55812/2006 DATED 22.12.2006.
EXT.P2	TRUE COPY OF NEWS ITEM PUBLISHED IN MALAYALA MANORAMA DAILY DATED 24.12.2006.
EXT.P3	TRUE COPY OF NEWS ITEM PUBLISHED IN MATHRUBHOOMI DAILY DATED 24.12.2006.
EXT.P4	TRUE COPY OF THE BYE-LAW AMENDMENT OF THE 4TH RESPONDENT.
EXT.P5	TRUE COPY OF THE CERTIFICATE NO.MT(1) 19041/2005 DATED 10.5.2005.
EXT.P6	TRUE COPY PROCEEDINGS NO.MT(1) 16180/06 DT. 29.4.2006 OF THE 3RD RESPONDENT.
EXT.P7	TRUE COPY OF CERTIFICATE OF REGISTRATION OF AMENDMENT NO.21/06 AND AMENDMENT.
EXT.P8	TRUE COPY OF NOTICE DT. 15.12.2006 (RELEVANT PAGE) WITH REGARD TO THE GENERAL BODY MEETING OF THE SOCIETY.
EXT.P9	TRUE COPY OF COMMUNICATION DT. 23.12.2006 ISSUED BY THE 4TH RESPONDENT.

RESPONDENT'S EXHIBITS:

EXT.R3(a)	A TRUE COPY OF THE CIRCULAR NO.38/2004 DATED 30.9.2004 ISSUED BY THIS RESPONDENT.
EXT.R5(a)	TRUE EXTRACT OF THE C and AG's report.
Ext.R5(b)	TRUE COPY OF THE CERTIFICATE OF REGISTRATION DATED 26.3.1993.

//TRUE COPY//

P.S. to Judge.

J.M. JAMES, J.

W.P.(C) Nos. 34569 of 2006,
923 & 1218 of 2007

Dated this the 24th January, 2007.

J U D G M E N T

The Chairman of the Kerala State Co-operative Hospital Complex & Centre for Advanced Medical Services Ltd.No.4386, Kannur, in short 'the Kannur Co-operative Society', is before this Court, through W.P.(C) No.34569/2006, challenging the order, dated 22.12.2006, in short 'the order', passed by the Registrar of Co-operative Societies, through which, the Board of Directors of the the Kannur Co-operative Society, had been removed under Section 33(1) of the Kerala Co-operative Societies Act, 1969, in short 'the Act'.

2. Five members of the elected Board of Directors of the Kannur Co-operative Society are the writ petitioners in W.P.(C) No.923 of 2007. They also challenge the order.

3. W.P (C) No. 1218/2007 is filed by one of the share holders of the Kannur Co-operative Society, challenging the order.

4. The brief facts required for understanding the case and the disposal of these writ petitions are that, the Kannur Co-operative Society, one of the co-operative ventures in Kerala, was started at Pariyaram, Kannur, in the year 1993. The activities of the Kannur Co-operative Society include, inter alia, conducting of a medical college, a pharmacy college, a nursing school, a dental college, a medical college public school, Sahakarana Hridyalaya, and so on. The election of the members to the Board of Directors had always drawn the attention of all those who are concerned with the functions of these establishments under the Kannur Co-operative Society. The last Board of Directors of the Kannur Co-operative Society was installed on 11.7.2002, their tenure being for five years. But through the order impugned, the Board of Directors had been removed on 22.12.2006. An Administrator had been appointed and he assumed charge. The removal was on the ground that the Board of Directors have lost the quorum to continue with the functions of the Kannur Co-operative Society.

5. I heard the arguments advanced by the counsel for the writ petitioners and the learned Advocate General. The bye-laws of the Kannur Co-operative Society, at its inception, was that the

management of the affairs of the Society "shall vest in a Board of Directors." After that, an amendment was recommended by the general body, and the same was registered on 10.5.2005, in which, the affairs of the Society is vested *'in Board of Directors consisting of not more than 25 members'*. The Board of Directors are constituted from different categories. The details of the Board of Directors, after the election on 11.7.2002, under various constituencies, reveal the total number as 20. This is borne out from the counter affidavit filed by the 3rd respondent, the Registrar of Co-operative Societies. The strength of the Board of Directors under each institution, share holder etc. are also mentioned in detail.

6. In the order impugned, the Registrar of Co-operative Societies, had stated that, out of the Board of Directors of the Kannur Co-operative Society, six had ceased to be the members, as they were withdrawn by the Government, and three were found disqualified. The Registrar, fixing the maximum number of Board of Directors at 25, as per the bye-law of the Kannur Co-operative Society, found that there is a lack of quorum, and, therefore, passed an order, under Section 33 (1) of the Act, removing the committee members and appointed an Administrator.

7. The cardinal point that arise in these writ petitions is, what is the number of members of the Board of Directors of the Kannur Co-operative Society, on the date of their removal; 25 as per the bye-laws or 20, as described in the counter affidavit of the 3rd respondent.

8. The learned Advocate General contented that the bye-laws enumerate the number of members of the Board of Directors as 25, and they need not be constituted. The learned counsel appearing for the writ petitioners submitted that the words, *'not more than 25 members',* contained in the bye-laws, only state the maximum number of Board of Directors, and unless they are constituted, as per Section 28(1) of the Act, and Rule 35(3)(h) of the Kerala Co-operative Societies Rules, 1969, in short 'the Rules', the maximum limit of Board of Directors cannot be considered as having fixed at the upper limit.

9. For clarity of discussion, I reproduce below Section 28(1) of the Act:

> "28. **Appointment of committee.--**(1) The general body of a society shall constitute a committee,

for a period not exceeding five years, in accordance with the bye-laws and entrust the management of the affairs of the society to such committee.

Provided that in the case of society registered after the commencement of this Act, the persons who have signed the application to register the society may appoint a committee to conduct the affairs of the society for a period of three months from the date of registration or for such further period as the Registrar may consider necessary; but the committee appointed under this proviso shall cease to function as soon as a committee has been constituted in accordance with the bye-laws:

Provided further that where the bye-laws so provide, the Government or the Registrar may nominate all or any of the members of the first committee, including the President or Chairman, for a period not exceeding twelve months.

Provided also that a Committee constituted prior to the commencement of the Kerala Co-operative Societies (Amendment) Act, 1999, shall be eligible to continue for a period of five years.

Provided also that the above proviso is not applicable to a committee where the committee has

passed a resolution before the commencement of the Kerala Co-operative Societies (Amendment) Act, 1999, for the conduct of election thereof.

(1A) xxx xxx xxx

(1B) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) The quorum for a meeting of a committee shall be such number of members just above fifty per cent of the total number of members of that committee."

(Emphasis supplied)

10. The bye-law of the Kannur Co-operative Society state that, the number of Board of Directors shall not be more than 25.

11. The fixing of the total number of members of the Board of Directors of a society, as per the bye-laws, came up for consideration before a learned Single Judge of this Court in **Subair Kunju v. Trivandrum Taluk M & P. Co-op. Society** (1990 (2) KLT 548). There, the Board of Directors consisted of not more than 11 members, as per Clause 5.1 of the bye-laws. At the relevant time, the

committee had only seven members. The strength of the committee has thus, not gone upto the maximum of eleven, as provided in the bye-laws. After considering the absence of three members, through resignation or otherwise, the remaining four (4) members were found to constitute the quorum of the committee, as contemplated under Section 28(5) of the Act.

12. The learned Single Judge who pronounced the judgment in Subair Kunju's case ,cited above, had another occasion to consider O.P.No.1853 of 1990, (V.V.Narayana Warrier and others v. The Joint Registrar of Co-operative Societies and others) wherein also, the number of Board of Directors, as per Clause 16 of the bye-laws of the Society, was not more than 11 members. The strength of the Board of Directors was only 8. But an order was passed appointing an Administrator, after removing the Board of Directors, holding that they have lost the quorum. But the contention was that there were only six members in the committee, and, therefore, even with the resignation of one member from the committee, when the impugned order therein was passed, there was quorum. The learned Judge found, after distinguishing Subair Kunju's case, cited above, that the decision was taken by the Board of Directors, 'to hold election to the remaining

vacancies', and, therefore, the Board has treated the number of the committee as 11. Hence, the action of the Registrar in appointing the Administrator was upheld.

13. **M.Jinadevan and others v. State and others** (1993 (2) KLJ 70) was placed before me, by the learned Advocate General to emphasise the point that the maximum number of members, as found in the bye-laws, are sufficient to fix the total number, and also that there is no necessity to constitute the committee members, fixing the maximum number of Board of Directors of the committee. The learned Single Judge considered as to what is "the total number of members of that committee" appearing in Section 28(5) of the Act, together with the words "constitute a committee" and "such committee", as are found in Section 28(1) of the Act. The learned Judge also had distinguished Subair Kunju's case, as well as V.V.Narayana Warrier's case, supra, and held as follows:-

> "In view of his conclusion that the strength of the committee was eleven, he upheld the order of the Registrar superseding the Board of Directors. The principle that emerges is that the strength of a

committee is the number which the Board of Directors decides. As in **V.V.Narayana Warrier** (O.P.No.1853 of 1990) in this case too, the Board held elections to **ELEVEN** vacancies. Therefore the Board of Directors of the Bank treated the strength of the Board as ELEVEN. From the subsequent explanatory judgment in **V.V.Narayana Warrier** it is clear that the number of members of committee is not the actual present number of members but that number which the committee decides to be the strength of the committee."

14. **Kurian v. Registrar** (1994 (2) KLT 202) was also placed for consideration of fixing the number of Board of Directors in a committee. After considering the Subair Kunju's case, V.V.Narayana Warrier's case, as well as Jinadevan's case, supra, the learned Single Judge, at paragraph 5, concluded regarding the quorum "just above fifty per cent of the total number" thus:-

"5. I do not find much of difficulty in rejecting this contention. The steps for ascertaining the quorum are clear. The total number of members of the committee is first taken. That is eleven. (The apparent contra decision is Subair Kunju v. Trivandrum Taluk M & P Co-op. Society, 1990 (2) KLT 548 has been explained by the same learned Judge in O.P.No.1853 of 1990). The

second step is a simple arithmetical calculation of fifty per cent of this number. That is 5.5. The third step is to fix the integer above this number. That is six. That is the quorum under sub-section (5) of S.28."

15. A consideration of the authorities discussed above, clearly show that the bye-law prescribes only the upper limit of the number of Board of Directors. The total strength of the Board of Directors has to be fixed, by the Committee and an election to the Board of Directors, has to be held as per the procedure laid down. The bye-laws of the Kannur Co-operative Society only show that the Board of Directors shall not be more than 25 members, meaning that the maximum limit of the members of the Board of Directors shall be 25, and the lower limit can be anything, as would be constituted by the Society. In Subair Kunju's case, the facts reveal that the actual number of Board of Directors constituted was seven. Therefore, after the disqualification of three members, the remaining four members were found to be sufficient to constitute quorum, under Section 28(5) of the Act. In V.V.Narayana Warrier's case, the Board of Directors have decided to hold election to the remaining vacancies of the committee, and, therefore, the maximum number of members of the Board of Directors was treated as eleven. In Jinadevan's case, cited

above, the learned Judge held, as quoted above, that, 'the number of members of the committee is not the actual present number of members, but that number which the committee decides to be the strength of the committee'. In Kurian's case, cited above, the learned Judge, after fixing up the number, gives the formula, under which, how 50% of the number has to be fixed to find the quorum.

16. In the counter affidavit filed by the 3rd respondent, the total number of members of the Board of Directors after the election dated 11.7.2002 is 20. Clause 20(ii) (a), (b), (c), (d), (e) & (f) of the bye-laws prescribe, how the Board of Directors are distributed among its constituents. The Board of Directors of the Kannur Co-operative Society, as per the bye-laws, shall not be more than 25 members.

17. There is no material before me to show, from any of the records, that three Directors from the members of the Societies/institutions who contributed not less than Rs.500 lakhs to the share capital had been elected at any time, as required under clause 20(ii)(d) of the bye-laws. Similarly, four directors from the

ordinary members who contributed not less than Rs.500 lakhs to the share capital, under clause 20(ii)(e) of the bye-laws had been elected.

18.The findings of Subair Kunju's case, as explained in V.V.Narayana Warrier's case, was discussed in Jinadevan's case. The principle that emerges is that there should be an election to the Board of Directors, so as to constitute the members of the Board of Directors. Those Board of Directors, thus elected, constitute the committee, as per the bye-laws of the Society, not exceeing the maximum number stated thereunder. The contention to the contrary is against the Act.

19. The learned Advocate General relying on Rule 35(3)(h) of the Rules, had urged that, "if the number of valid nominations received by the Returning Officer is less than the number of candidates to be elected but it constitutes quorum for a meeting of the committee as provided for in sub-section (5) of Section 28 of the Act and bye-laws of the society, he shall declare such of the candidates whose

nominations have been found to be valid, as duly elected; the persons who are so declared to have been duly elected shall form the committee".

20. A reading of Rule 35(3)(h) of the Rules, also reveal that the mere maximum limit of the Board of Directors stated in the bye-laws do not ipso facto constitute that number of the committee members. They have to be duly constituted, as per the provisions of the Acts and Rules. Even if the valid nomination papers received are less than the candidates to be elected, if that number constitute the quorum under Section 28(5) of the Act and the bye-laws, they could be declared elected. They will form the committee. As per the records, at the time of passing of the impugned order, the total number of members of the Board of Directors was only 20 and not 25.

21. Although there is a challenge by the writ petitioners regarding the disqualification of the three members, I express no opinion on that matter, as their inclusion along with the other six members who were withdrawn from the committee, at the time of passing of the order impugned, would not change the result, as excluding the nine, the reminder is only eleven. Thus, relying on

Section 28(5) of the Act, of the total 20 members of the committee, eleven members constitute "just above fifty percent" of the total number of members of "that committee".

22. In such circumstances, the explanation given in the order impugned and the conclusions arrived at, for removing the Board of Directors of the Kannur Co-operative Society, for want of quorum, cannot be sustained. Therefore, I set aside the order impugned, dated 22.12.2006.

23. The learned Advocate General had argued about the cancellation of certain portions of the amendments of the bye-laws of the Kannur Co-operative Society, as well as registering certain other portions of the amendments of the bye-laws. I have already found that no members from the Societies/institutions, as well as ordinary members, whose share capital qualification had been prescribed under clause 20(ii)(d) & (e) of the bye-laws, have been elected. Therefore, a further discussion on it is not necessary, for the disposal of these writ petitions.

24. In view of the setting aside of the order impugned, dated 22.12.2006, the Board of Directors who had been removed, as per that order, are reinstated, to conduct the affairs of the Kannur Co-operative Society, as per the Act, Rules and bye-laws.

25. In the light of my findings, as above, the other contentions raised before me have not been considered, for they are not required for disposal of these writ petitions.

The writ petitions are disposed of accordingly.

J.M. JAMES,
JUDGE

nj.